

Georgia Department of Natural Resources
Environmental Protection Division

2 Martin Luther King Jr., Dr., Suite 1456, Atlanta, Georgia 30334
Judson H. Turner, Director
(404) 656-4713

DEC 29 2015

Alan Farmer, Director
Resource Conservation and Restoration Division
U.S. Environmental Protection Agency, Region IV
Atlanta Federal Center
61 Forsyth Street SW
Mail Code: 9T25
Atlanta, Georgia 30303-8960

RE: Request for US EPA's Concurrence and Opinion

Dear Mr. Farmer:

The State of Georgia is seeking EPA's guidance to discern the respective obligations where a portion of a hazardous waste facility that is subject to a hazardous waste permit has been sold or otherwise transferred to another party. We appreciate the assistance you and your staff have provided us in the past, and we believe that our position outlined below is consistent with the law and Georgia EPD precedent. However, the regulated parties in this case have requested a reevaluation of our position and thus, we are requesting your input. The details of the case and our position are described below.

The facility in question is the International Paper (IP)/Arizona Chemical Company (ACC) site in Savannah, Georgia. Georgia EPD issued the initial hazardous waste permit for this facility in 1988 to Union Camp. IP bought the entire operation from Union Camp in 1999, and the hazardous waste permit was transferred to IP. In 2007, IP divested ACC. ACC owns one portion of the facility, conducting ACC operations thereon, and operates on another portion of the facility owned by IP. IP owns and operates its operations on the remaining portion of the facility. After the divestiture, both companies submitted separate permit applications for the entire facility. Since that time, EPD has been negotiating with both IP and ACC over whether the facility should be issued one permit with the parties listed as co-permittees or if multiple permits should be issued for the facility. It is important to note that both companies are willing to have a hazardous waste permit for those portions of the facility that each company owns, but neither desires to be co-permittees on the other's hazardous waste permit.

After discussions with IP, ACC, and EPA, it is EPD's position that the facility should be regulated under one hazardous waste permit with IP and ACC listed as co-permittees. That decision is based in part on the fact that the facility operations and the regulated activities are not separate and distinct. Specifically:

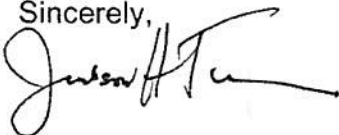
The facility operations are intertwined:

- ACC was formed by IP in 1930 as a separate corporation; however, IP was the sole owner of ACC from 1984-2007. Both companies have had operations at the Savannah facility since it was purchased by IP in 1999;
- The feedstock for ACC's operations come from IP; and
- One portion of the facility is owned by IP but operated by ACC.

The regulated activities are intertwined:

- There are SWMUs located on property owned and operated by IP, property owned and operated by ACC and on the parcel owned by IP and operated by ACC;
- The SWMUs have similar contaminants and the releases have not been fully delineated;
- Releases from the SWMUs on property owned by ACC may have occurred during IP's ownership and may still be occurring under ACC's operation; and
- The groundwater recovery system is extracting contaminated groundwater located on the portion owned by ACC. The groundwater is then sent to a wastewater treatment system owned by IP and located on the parcel owned by IP.

In conclusion, EPD believes that the facts as presented do not justify separate permits for IP and ACC. EPD is requesting that EPA provide any concerns or disagreements with this approach by January 29, 2016. Should you need any additional information or have further questions, please contact Jim Brown of my staff at (404) 657-8644. Thank you for your assistance with this matter.

Sincerely,


Judson H. Turner
Director



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 01 2016

Mr. Judson H. Turner, Director
Environmental Protection Division
Georgia Department of Natural Resources
2 Martin Luther King, Jr., Drive, Suite 1456
Atlanta, Georgia 30334

Re: Response to December 29, 2015, Letter concerning International Paper/Arizona Chemical Company hazardous waste permitting issues

Dear Mr. Turner:

This letter is in response to your December 29, 2015, letter to the U.S. Environmental Protection Agency requesting the EPA Region 4's concurrence and opinion regarding hazardous waste permitting obligations at the International Paper (IP)/Arizona Chemical Company (ACC) facility in Savannah, Georgia. Based on the facts summarized in your December 29th letter, the EPA concurs with the Georgia Environmental Protection Division's (GAEPD) conclusion that the facility should continue to be regulated under one hazardous waste permit with both IP and ACC listed as co-permittees.

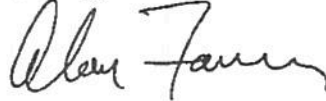
As a threshold matter, it is the EPA's understanding that IP and ACC are conducting corrective action (with no other permitted hazardous waste activities) pursuant to an existing permit, and that IP and ACC now seek two separate permits for the Savannah facility. Continued corrective action under a joint permit for the facility is appropriate based on several facts listed in your letter, including that IP and ACC operations, both historically and currently, are intertwined; that the ongoing corrective action involves solid waste management units (SWMUs) on both IP and ACC property; and that the contaminants and releases have not been fully defined.

GAEPD's position is consistent with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*, as well as EPA policy and guidance. Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), makes clear that corrective action is required for all SWMUs at a RCRA facility "regardless of the time at which waste was placed in such unit." 42 U.S.C. § 6924(u). The EPA has clarified that "[t]his clear statutory directive precludes a reading of the statute which would limit an owner's or operator's responsibilities to waste placed in units during his or her tenure. Accordingly, the owner or operator of a solid waste management unit containing only waste placed there by a previous owner would be fully responsible for corrective action for any release from such unit." 50 Fed. Reg. 28702, 28714 (July 15, 1985). In addition, the obligation to obtain a RCRA permit rests with both the "owner" and the "operator" of a facility. *See, e.g.*, 40 C.F.R. § 270.1(c). Where there is more than one owner or operator at RCRA facility, all such persons are listed on the permit as co-permittees.¹

¹ "Owner" is defined as the person "who owns a facility or part of a facility." 40 C.F.R. § 260.10. This definition makes clear that a facility may have multiple legal owners, all of whom would constitute the "owner" of a facility for permitting purposes. "Operator" is defined as "the person responsible for the overall operation of the facility," not just the operation of a particular SWMU or regulated unit. 40 C.F.R. § 260.10.

In conclusion, the EPA supports and concurs with GAEPD's determination that the IP/ACC facility should continue to be regulated under one hazardous waste permit, with both IP and ACC as co-permittees. We greatly appreciate your continued coordination with the Region on the evaluation of corrective action permitting issues as they arise. GAEPD's careful attention to these issues is helping to ensure the issuance of permits that will effectively accomplish full corrective action at facilities in the Region. Please contact me if you have any further questions on this permitting matter or any others.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Farmer". The signature is fluid and cursive, with the first name "Alan" and the last name "Farmer" clearly distinguishable.

G. Alan Farmer
Director
Resource Conservation and Restoration Division